of the Code and a complaint is an allegation made to a Magistrate with a view to his taking action under the Code.

In the present case the statement made by the taxi driver was not the complaint. It was the information. The complaint was what appears on the front of the form, that is to say the allegation addressed to the Magistrate that Mr. Leonard had committed the offence of dangerous driving. It is true that the front of the form is not headed "complaint" but "application for summons" and it is true that the body of it refers to the information, presumably as a convenient way of furnishing details as to the time and place of the alleged offence necessary for framing a summons. It is impossible, however, to see any reason why the same document should not be both an application for summons and a complaint and in our view in the present case it complied with all the requirements of the Code necessary to constitute a complaint on the basis of which the Magistrate must under section 128 take cognisance of the alleged offence. It was an allegation made to a Magistrate with a view to his taking action under the Code that a person had committed an offence. The questions of whether or not it was signed (though in the present case it was in fact signed) or indeed was in writing at all or whether it stated the facts alleged to constitute the alleged offence were wholly irrelevant and once it was made to him the Magistrate was bound to take cognisance of the offence alleged. Having taken cognisance of it he was bound to proceed to issue a summons if in his opinion there was sufficient ground for proceeding.

We are accordingly of the opinion that the present appeal should be allowed and the order of discharge made by the Magistrate should be set aside. The case should be remitted to the Magistrate to be dealt with according to law.

We would add that in our opinion Police form No. 52 is not an altogether satisfactory form. Even with present-day methods of dealing with summonses and charge sheets in Magistrate's Courts some such form is, if not strictly necessary, probably desirable but we think the Commissioner of Police should take advice with a view to having a new form drafted.

Appeal allowed.

Solicitors: *Shearn Delamore & Co.*

LAI CHENG LIM v. THE CITY COUNCIL OF GEORGE TOWN, PENANG

[O.C.J. (Rigby J.) August 21, 1959]

[Penang — Civil Suit No. 61 of 1959]

Master and Servant — Employment — Damages for wrongful dismissal — Right of City Council to remove at pleasure — Municipal Ordinance (S.S. Cap.133), s.16(5).

Local Authority — Employment by — Removal from office without cause stated, without notice and without hearing.

This was a claim by the plaintiff for damages for wrongful dismissal. The plaintiff was employed by the City Council of George Town, Penang as a Building Inspector. Complaints were made by two stall holders that the plaintiff had asked them to pay him for giving permission to carry on their business in stalls put up by them and for not taking action against them under section 144 of the Municipal Ordinance for erecting unauthorised structures. The complaints were investigated by a Committee of Inquiry set up by the City Council and after a hearing at which the plaintiff was given opportunity to cross-examine the witnesses and to put forward his case, the Committee found that the charge of corruption preferred against him had been fully proved. The finding of the Committee was accepted by the City Council and the City Council resolved that the plaintiff be removed from his office. The plaintiff was dismissed from office by a letter dated February 28, 1959 and he thereupon instituted proceedings by a Writ of Summons issued on March 10, 1959.

Held: the defendants, by virtue of section 16(5) of the Municipal Ordinance, were entitled to dismiss the plaintiff at pleasure and without notice and therefore the claim for damages for wrongful dismissal must be dismissed.

Cases referred to:—

(1) *Brown* v. *Dagenham Urban District* [1929] 1 K.B. 737.

(2) *Short* v. *Poole Corpn.* [1926] Ch. 66.

(3) *McManus* v. *Bowes & Ors.* [1938] 1 K.B. 98.

(4) *R.* v. *Darlington School Governors* 6 Q.B. 682.

(5) *In re Teather* 19 L.J. (M.C.) 70.

CLAIM for Damages.

Jag-Jit Singh for the plaintiff.

Eusoffe Abdoolcader for the defendants.

Cur. Adv. Vult.

Rigby J.: In this action the plaintiff claims damages as against the City Council of George Town, Penang, for wrongful dismissal.

At the time of his dismissal the plaintiff was employed by the City Council as a Building Inspector (Town Division). He had 30 years' service with the City Council and its predecessors in title, the Municipal Corporation, and was due to retire in a year's time.

[After stating the facts of the case, which for the purposes of this report is summarised in the headnote above, the learned Judge continued:]

The defence raised has been twofold. First, the defendants say that they were under no obligation to set up any Committee of Inquiry before dismissing the plaintiff; that in so setting up a Committee of Inquiry they acted in accordance with the principles of natural justice, and essential fairness, that a man should not be condemned until he has had an opportunity of being heard. They contend that as a matter of law, upon a proper interpretation of section 16(5) of the Municipal Ordinance, the plaintiff was at all times during his employment with the defendants liable to be removed from office without cause stated, without notice and without hearing.

Secondly, they contend that on the facts they were fully entitled to dismiss the plaintiff for proved misconduct. Since I am satisfied that this action must be dismissed on the first ground, in fairness to the plaintiff I propose, first, to say a few words on the second ground. There can

be no doubt whatsoever that if, in fact, the allegations made by the two complainants against the plaintiff were true the defendants were entirely justified in summarily dismissing the plaintiff for what was, in fact, the criminal offence of corruptly attempting to obtain money for doing, or forbearing to do, an act in relation to his principal's affairs in his capacity as an officer employed by the City Council. In my view, as I have already said, it is unfortunate that the matter was not referred to the Police in the first instance for investigation and, if necessary, prosecution. I have already said, and I repeat, that I am fully satisfied that the Inquiry was properly conducted and that its members unanimously found the charge of corruption proved against the plaintiff. I am certainly not prepared to say that on the evidence before them that verdict was unreasonable and unsupported by the evidence they heard. The two complainants have given sworn testimony before me and have substantially repeated the evidence they gave before the Committee of Inquiry. Mr. Jag-Jit Singh, for the plaintiff, has urged that the story of the two complainants that they produced $50 but that the plaintiff refused to take it and sent them away to get more was, on the face of it, wholly improbable for two reasons:—

(1) that in any event he would have accepted the $50 on account, even if he had asked for more; and

(2) that in any event it was most improbable that he would have sent them away to bring more money and thereby lay himself open — in the event of them reporting to the Police — to a trap to be prepared against him in the production of marked money.

He further drew attention to the fact that no complaint of corruption was made by Kim Chee Han to the Mayor on his first visit but that such complaint was only made on the second visit, which was after both the complainants had been re-served with the Notices. He submitted that the complainants were simply trying to get their own back against the plaintiff, because he had taken action against them, by making a false and malicious complaint against him. Those are matters which, no doubt, were carefully considered by the Committee of Inquiry. But they would, no doubt, have been more forcefully and convincingly urged if the plaintiff had had the advantage of being represented by Counsel before the Committee in regard to the serious charges preferred against him. That the Committee were unanimously satisfied as to the truth of the allegations made against him is beyond question. Whether or not a criminal Court — or I myself in this action — having heard the sworn testimony of the two complainants, would be satisfied that the charges against the plaintiff were proved, is not a matter that I feel called upon to answer, having regard to the fact that I am wholly satisfied that the plaintiff's action must be dismissed on other grounds.

I turn now to the defendants' main contention that as a matter of law they were entitled at any time to remove the plaintiff from his office without notice. Section 16 of the Municipal Ordinance, as amended, enacts that the Secretary shall annually submit to the Councillors for their approval a List of the offices which he thinks necessary for the purpose of the Ordinance with the salaries and allowances, if any, proposed to be attached to such offices. It is not in dispute that the plaintiff's name appears on that List.

Section 16(5), as amended, enacts that the City Secretary "may appoint such persons as he thinks fit to the offices shown on the list so approved as aforesaid and may remove such persons from office and appoint others in their stead, provided that the appointment and removal of persons to or from an office carrying a commencing salary of $200 a month and over shall be subject to the approval of the Councillors." The footnote to section 16(5) to be found in Walter's Standard Commentary on the Municipal Ordinance cites the cases of *Brown* v. *Dagenham Urban District Council* [1] and *Short* v. *Poole Corporation* [2] as authorities for the proposition that the persons subject to removal under that subsection are liable to dismissal regardless of any special contract to the contrary, on the approval of the Secretary, subject in certain instances to the approval of the Councillors "without cause stated, without notice and without hearing."

The facts in *Brown's case* were that he was appointed as an Assistant Overseer to the Dagenham Parish Council. Later the Parish Council was converted into the Dagenham Urban District Council and he was additionally appointed as a clerk to that Council. The terms of this additional appointment provided for three months' notice on either side. Subsequently, he was summarily dismissed. He instituted proceedings claiming, *inter alia*, three months' salary in lieu of notice to determine his service as a clerk, and damages for wrongful dismissal from the office of Assistant Overseer. His appointment as clerk to the Urban District Council was governed by section 189 of the Public Health Act, which enacted that:—

".....every such officer and servant appointed under this Act shall be removable by the Authority at their pleasure."

His appointment as Assistant Overseer was governed by section 5(1) of the Local Government Act, which enacted that:—

".....the power of appointing and revoking the appointment of an Assistant Overseer.....shall be transferred to and vested in the Parish Council."

In dismissing Brown's claim for three months' salary in lieu of notice to determine his service as a clerk McCardie J. referred to, and quoted an earlier decision of Talbot J. on the interpretation of section 189 of the Act, in which the learned Judge had said:—

"The urban authority had not.....any power to enter into any contract of employment, either with the plaintiff, or with anybody else, under which they were deprived of that power which in the public interest the statute expressly conferred upon them of removing him at their pleasure. .....It is entirely inconsistent with the wording of that statute to suppose that in spite of

it they were at liberty to enter into any such contract as is alleged, and certainly it appears strongly to confirm that view that no case can be produced during the 50 years in which this Act (i.e. the Public Health Act, 1875) has been in force in which any servant of a local authority who is under the terms of that section has maintained or even commenced an action against a local authority alleging that they had illegally terminated his employment."

McCardie J., with obvious reluctance, concluded that the view of Talbot J. was sound and said in his judgment — and I quote his words :—

"……I conclude that the view of Talbot J. was sound and that a Council can dismiss its clerk at pleasure, whatever may be the contract between them."

In dismissing Brown's claim for wrongful dismissal from his post as Assistant Overseer McCardie J., after postulating the question "Can his employers dismiss him at any time and without prior notice given?" and pointing out that no such words as "at their pleasure," which appeared in section 189 of the Public Health Act, appeared in section 5(1) of the Local Government Act, went on to say :—

"But the power of revocation again is given in the widest terms and no limitation is placed upon it."

He concluded :—

"I can see no real distinction between a power to dismiss 'at pleasure' under section 189 of the Public Health Act, 1875, and the power to 'revoke' an appointment which is given by section 5(1) of the Local Government Act, 1894. I must, therefore, hold that the defendants could dismiss the plaintiff at any time without notice and without cause from his post as Assistant Overseer, subject, of course, to the question of *bona fides*. Such is the law created by legislation."

The case of *Short* v. *Poole Corporation* (2) again turned upon the power of a statutory authority to appoint the necessary officers, including teachers, during the pleasure of the authority, and to remove any of those officers. That case concerned the dismissal of a school teacher in accordance with the policy of the Local Education Authority of not employing married women as teachers or, as in that case, terminating their services upon marriage.

In *Brown's case*, the statute under consideration — section 189 of the Public Health Act — enacted that officers appointed by the authority were removable by the authority "at their pleasure."

In *Short's case*, the statute provided that the Local Education Authority "may appoint the necessary officers, including teachers, to hold office during the pleasure of the Authority, and may……remove any of those officers."

In *Brown's case*, consideration was also given to the words of the section of the Local Government Act conferring power on the authority of appointing and "revoking" the appointment of an Assistant Overseer.

In the section of the Municipal Ordinance now under consideration before me power is simply given to "remove……from office……". In the absence of such additional words in the section as "at pleasure," it might well be argued that a mere power to remove does not carry with it a right to remove without notice. Similarly, it might be argued that the words in a statute empowering an authority to "revoke" an appointment contained a greater degree of finality than a mere power to remove from office, and that whereas the use of the word "revoke" might imply a power to terminate an appointment without notice, the bare use of the word "remove" confers no such power. But the case of *McManus* v. *Bowes & Ors.* (3) entirely disposes of any such argument that might be put forward on those lines. In that case, the plaintiff claimed damages for wrongful dismissal from his appointment as an Assistant Medical Officer at a Mental Asylum. Section 276(1) of the Lunacy Act provided that :—

"The Visiting Committee of every asylum shall appoint……

(b) a Medical Officer...;

(f) such other officers and servants as they think fit."

Section 276(3) enacted :—

"The Committee may remove any person appointed under this Section."

The defendants in that case contended that the section gave them power to remove any person appointed under that section at their pleasure, and that they could without assigning any reason remove any person from the office to which he had been appointed. The learned trial Judge upheld that contention and dismissed the plaintiff's claim. The plaintiff appealed, and his appeal was dismissed by a majority decision, Greer L.J. dissenting. In the course of his judgment dismissing the appeal Slesser L.J. said that he saw no reason why the word "remove," in contradistinction to the word "appoint," should not be given its natural meaning which was, as he saw it, to remove at pleasure or to remove at will. He expressed the view that the addition of such words as "at pleasure," "at will" and the like was mere surplusage. MacKinnon L.J., in the course of his judgment said, at pages 128-129 :—

"I think that the section of the Lunacy Act by which the Committee were given power to appoint him and to remove him from his appointment gave them, in effect, power to put an end to his employment at pleasure. I can see no real difference between the words 'to revoke his appointment' and the words 'remove him from his office'. Quite apart from the mere words themselves, I think that the result of the three cases of *Brown* v. *Dagenham Urban District Council* (1), in the decision of which I agree with McCardie J.'s view: *Reg.* v. *Darlington School Governors* (4); and *In re Teather* (5), go to show that the meaning of these various phrases used in different Acts is really the same, and that where under section 276 of the Lunacy Act of 1890 it is provided that the Committee may remove any person appointed under this section, that is the same as a power to revoke his appointment, and it really amounts to a provision that he is employed at the pleasure of the Committee."

On the authority of these cases I am, therefore, satisfied that the defendants, by virtue of the powers conferred on them by section 16(5) of the Municipal Ordinance, were entitled to dismiss the plaintiff at pleasure and without notice. I am entirely satisfied that in so doing they acted in good faith.

The plaintiff's action must accordingly be dismissed with costs.

Order accordingly.

Solicitors: *Jag-Jit Singh; Presgrave & Matthews.*

ANTHONY SOOSAY v. PUBLIC PROSECUTOR

[A.Cr.J. (Smith J.) July 29, 1959]

[K.L. — Criminal Appeal No. 35 of 1959]

Local Authority — Nuisance notice — Service on owner of premises — Nuisance caused by adjacent building operation — Municipal Ordinance (S.S. Cap.133), s.246(6)(b) — Failure to comply with order.

In this case the appellant was the owner of the premises in question. The adjoining premises had been demolished for the erection of a new building and excavation and piling work was being done there. Cracks appeared in the appellant's premises and he instructed his solicitors to write to the Municipal Architect informing him that the premises were being damaged presumably by adjacent building operation. As a result of the letter a Building Inspector visited the premises and found several cracks in the cross walls and external walls which appeared to him to have been caused by the building operation next door. The Deputy Municipal Architect who also saw the building was satisfied that the cracks in the building were structural defects and constituted a nuisance. Consequently a notice under section 246 of the Municipal Ordinance was sent to the appellant as owner of the premises. On subsequent visits it was found that a few cracks in the walls had been plastered up and that what had been done did not amount to compliance with the notice. On these facts the appellant was convicted by the Magistrate.

On appeal it was contended for the appellant that since it was clear from the prosecution case that the person directly responsible for the nuisance was the firm of builders carrying out the demolition, that fact provided a complete defence to the charge against him. It was argued that when the person responsible for creating the nuisance was known to the local authority, the local authority could not obtain a conviction against the occupier or owner of the house even though such person had been served with a notice under this section and had made default in complying with any of its requisitions within a specified time.

Held: the order which had to be complied with in this case was to do certain works on the premises in question. If the notice which was served on the appellant had been served upon the building contractor whose activities caused the defects he might not have been able to comply with the order because he had no right to enter upon the premises. In the circumstances of the case the appeal must be dismissed.

Observations on the need to modernise the law relating to nuisance.

Cases referred to:—

(1) *Andrew* v. *St. Olave's Board of Works* [1898] 1 Q.B. 775 at p. 781.

(2) *Scarborough Corpn.* v. *Scarborough Sanitary Authority* (1876) 34 L.T. 768.

MAGISTRATE'S CRIMINAL APPEAL.

A. K. Sen for the appellant.

J. A. B. Lang for the respondent.

Cur. Adv. Vult.

Smith J.: The appellant was convicted by the Kuala Lumpur Magistrate on the following charge and fined $100:—

"That you make default in complying with Nuisance Notice No. 22 dated 20/9/58 duly served on you on 22/9/58 within the time specified, i.e. to shore up the cracked pillars which must be repaired to a stable condition, to bond in cracked walls with granite bondstones set in strong cement mortar, and to repair windows and doors at premises No. 1, Batu Road, Kuala Lumpur forthwith from the service of the said notice, and that you thereby committed an offence punishable under section 246(6)(b) of the Municipal Ordinance Cap. 133 of the Straits Settlements as applied to the Malay States including the Municipality of Kuala Lumpur vide the Municipal Ordinance (Extended Application) of 1948."

He has appealed against his conviction.

The appellant is the owner of premises No. 1 Batu Road. The adjoining premises in Mountbatten Road had been demolished for the erection of a new building. Cracks appeared in the premises which the appellant attributed to the demolition work next door. The appellant's solicitor wrote to the Municipal Architect informing him that the premises were being damaged presumably by the excavation and piling work being done next door. On 20th September. 1958, as a result of the letter, a Building Inspector visited the premises and found several cracks in the cross walls and external walls which appeared to him to have been caused by the building operation next door. The Deputy Municipal Architect who also saw the building was satisfied that the cracks in the building were structural defects and constituted a nuisance. The cracks were on cross walls and external walls on the ground floor, first floor and second floor.

On 22nd September 1958 a notice under section 246 of the Municipal Ordinance was sent to the appellant as owner of the premises.

On subsequent visits it was found that a few cracks in the walls had been plastered up and that what had been done did not amount to compliance with the notice. All the following facts were established by the prosecution evidence and on these facts the Magistrate convicted the appellant.

The appellant chose to say nothing and the whole of his case was a submission that on the facts as they stood he was entitled to an acquittal.

Mr. Sen has argued for the appellant that since it is clear from the prosecution case that the person directly responsible for the nuisance was the firm of builders carrying out the demolition, that fact provides a complete defence to the charge against him. The argument is that when the person responsible for creating the nuisance is known to the local authority the local authority cannot obtain a conviction